

RCB | ROSENBERG CALICA & BIRNEY LLP

100 Garden City Plaza, Suite 408, Garden City, New York 11530 TELEPHONE 516-747-7400

Joshua M. Liebman

Partner

EMAIL ADDRESS: jliebman@rcblaw.com

DIRECT DIAL: (516) 747-7400 (Ext. 333)

Fax: (516) 747-7480

June 12, 2024

VIA CM/ECF

Honorable Arlene R. Lindsay, United States Magistrate Judge
United States District Court, Eastern District of New York
814 Federal Plaza
Central Islip, New York 11722

Re: *Town of Hempstead, et al. v. Triborough Bridge and Tunnel Authority, et al.*
No. 2:24-cv-03263 (ARL) (E.D.N.Y.)

Dear Magistrate Judge Lindsay:

We are the attorneys for the plaintiffs Town of Hempstead and Donald X. Clavin Jr. (collectively, “Town”). We write in response to the June 5, 2024 and June 11, 2024 letters of defendants Metropolitan Transportation Authority (“MTA”) and Triborough Bridge and Tunnel Authority (collectively “MTA Defendants”) (ECF 20, 23) reporting that the Congestion Pricing Program (the “Plan”) has been placed on “hold” for an unspecified period by Governor Hochul.

We respectfully reiterate our prior request that the Court determine the MTA Defendants’ opposed change of venue motion on an expedited basis and direct the MTA Defendants to answer the Complaint. Notwithstanding Governor Hochul’s recent statements, this case remains very much a live controversy. The federal defendants have been served and the need to bring this case to an early summary judgment resolution remains urgent. Most telling are the Governor’s own words. Significantly, the Governor did not terminate, but merely placed the Plan on “pause.”¹ A “pause” in the “implementation” of the Plan is just that, a temporary delay of the apparently inevitable.

There are clear signs that the Plan is likely to come roaring back to life without advance notice, whether after the November elections or before then. For example, to this day the MTA Defendants remain steadfast in their support for congestion pricing and continue to be prepared for its eventual implementation. Just two days ago, Janno Lieber, MTA’s chair and CEO, reinforced the MTA’s commitment to the Plan, emphatically stating that, “[w]e at the MTA aren’t giving up

¹ See Ashford, Grace, “Hochul Halts Congestion pricing in a stunning 11th Hour Shift,” New York Times, June 5, 2024 available at <https://www.nytimes.com/2024/06/05/nyregion/congestion-pricing-pause-hochul.html>.

Honorable Arlene R. Lindsay

June 12, 2024

Page 2

on congestion pricing, not at all.”² The MTA’s position is buttressed by the fact that half a billion dollars’ worth of congestion pricing infrastructure consisting of E-Z Pass readers, license plate-scanning cameras and other equipment is still mounted at over 100 locations south of 60th Street.³ It cannot be lightly assumed that the Governor will permit such a huge public investment to simply go to waste.

Further, no one should lose sight of the fact that there is an existing statutory mandate by the New York State Legislature to implement the Plan which is unaffected by the Governor’s pronouncement. The mandatory language of the statute has caused many to question Governor Hochul’s legal authority to unilaterally pause the Plan. It is entirely possible and perhaps inevitable that the Governor’s unilateral actions will be subject to mounting legal challenges.⁴ When (not if) the Plan is eventually implemented residents of the Eastern District, including the Town will be hit particularly hard by the tolls levied under the Plan, as tens of thousands of them commute by car into Manhattan on a daily basis. The Town and its residents therefore rightfully deserve an expeditious prosecution of their claims.

We appreciate the Court’s consideration.

Respectfully submitted,

ROSENBERG CALICA & BIRNEY LLP

By: 

Joshua M. Liebman

Judah S. Serfaty

Peter J. Clines

cc: Kaplan Hecker & Fink LLP (via CM/ECF)

² See, Campanile, Carl, Golden, Vaughn, Geiger, Dorian, and Troutman, Matt, “MTA vows it ‘isn’t giving up’ on hated congestion pricing plan after Hochul’s sudden about-face,” New York Post, June 10, 2024 available at <https://nypost.com/2024/06/10/us-news/mta-vows-it-isnt-giving-up-on-hated-congestion-pricing-plan-after-hochuls-sudden-about-face/>.

³ See, Calder, Rich, “\$500M of taxpayer dough wasted? Hochul, MTA lack Plan B for NYC congestion pricing infrastructure,” New York Post, June 8, 2024 available at <https://nypost.com/2024/06/08/us-news/gov-hochul-mta-lack-plan-b-for-nyc-congestion-pricing-infrastructure/>.

⁴ See, Meyer, David, “Hochul’s Bid to Stop Congestion Pricing Might Be Illegal,” StreetsBlog NYC, June 10, 2024 available at <https://nyc.streetsblog.org/2024/06/10/kathy-hochuls-bid-to-stop-congestion-pricing-might-be-illegal>.